

TO: **Mail Stop 8**  
**Director of the U.S. Patent & Trademark Office**  
**P.O. Box 1450**  
**Alexandria, VA 22313-1450**

**REPORT ON THE  
 FILING OR DETERMINATION  
 ACTION REGARDING A PATENT  
 TRADEMARK**

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court Northern District of California on the following ☒ Patents or ☐ Trademark  
 DOCKET NO. CV 12-02540 HRL DATE FILED 5/17/212 U.S. DISTRICT COURT  
 PLAINTIFF FORTINET, INC DEFENDANT 280 South First Street, Rm 2112, San Jose, CA 95113  
SRI INTERNATIONAL, INC

PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1		SEE ATTACHED COMPLAINT
2		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill	<input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK				
1					
2					

HOLDER OF PATENT OR TRADEMARK

In the above—entitled case, the following decision has been rendered or judgement issued:

ON/JUDGEMENT

Richard W. Wiekling (BY) DEPUTY CLERK  
 Betty Walton  
 Initiation of action, mail this copy to Commissioner  
 ing document adding patent(s), mail this copy to Commissioner  
 Copy 3—Upon termi  
 DATE

**EIGHTH CAUSE OF ACTION**  
**(Declaratory Judgment of Noninfringement of U.S. Patent No. 6,711,615)**

45. Fortinet repeats and realleges each and every allegation set forth above in paragraphs 1 through 44, inclusive, and incorporates them by reference herein.

46. Because SRI contends that Fortinet needs to license the '615 patent, it follows that SRI believes its '615 patent is valid and infringed by Fortinet. As a result of the totality of the circumstances between the parties discussed above, Fortinet believes that SRI intends to sue Fortinet for infringement of the '615 patent.

47. Fortinet contends that its products and services do not infringe, contribute to the infringement of, or induce others to infringe any valid and enforceable claim of the '615 patent, either directly or indirectly, either literally or under the doctrine of equivalents. Accordingly, Fortinet does not need a license to the '615 patent, and it has a right to continue to providing its security services without a license to or interference from SRI's '615 patent.

48. Accordingly, an actual, valid, and justiciable controversy has arisen and exists between Fortinet and SRI. Fortinet desires a prompt and definitive judicial determination and declaration that its products do not infringe any valid claim of the '615 patent. Such a determination and declaration are necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

**NINTH CAUSE OF ACTION**  
**(Declaratory Judgment of Invalidity of U.S. Patent No. 7,594,260)**

49. Fortinet repeats and realleges each and every allegation set forth in paragraphs 1 through 48, inclusive, and incorporates them by reference herein.

50. Because SRI contends that Fortinet needs to license the SRI patents, it follows that SRI believes its '260 patent is valid and infringed by Fortinet. As a result of the totality of the circumstances between the parties discussed above, Fortinet believes that SRI intends to sue Fortinet for infringement of the '260 patent.

51. Fortinet contends that the '260 patent is invalid because it fails to satisfy the conditions and requirements for patentability as set forth, *inter alia*, in Sections 101, 102, 103,

1 and/or 112 of Title 35 of the United States Code. For example, the '260 patent is anticipated  
2 and/or rendered obvious in light of Live Traffic, EMERALD 1997, Lewis, and the ISS  
3 RealSecure and NetRanger products.

4 52. On at least the basis that it believes the '260 patent is invalid, Fortinet does not  
5 need a license to the '260 patent, and it has a right to continue providing its security products and  
6 services without a license to or interference from SRI's '260 patent.

7 53. Accordingly, an actual, valid, and justiciable controversy has arisen and exists  
8 between Fortinet and SRI. Fortinet desires a prompt and definitive judicial determination and  
9 declaration that the '260 patent is invalid. Such a determination and declaration are necessary  
10 and appropriate at this time in order that the parties may ascertain their respective rights and  
11 duties.

12  
13 **TENTH CAUSE OF ACTION**  
**(Declaratory Judgment of Noninfringement of U.S. Patent No. 7,594,260)**

14 54. Fortinet repeats and realleges each and every allegation set forth above in  
15 paragraphs 1 through 53, inclusive, and incorporates them by reference herein.

16 55. Because SRI contends that Fortinet needs to license the '260 patent, it follows that  
17 SRI believes its '260 patent is valid and infringed by Fortinet. As a result of the totality of the  
18 circumstances between the parties discussed above, Fortinet believes that SRI intends to sue  
19 Fortinet for infringement of the '260 patent.

20 56. Fortinet contends that its products and services do not infringe, contribute to the  
21 infringement of, or induce others to infringe any valid and enforceable claim of the '260 patent,  
22 either directly or indirectly, either literally or under the doctrine of equivalents. Accordingly,  
23 Fortinet does not need a license to the '260 patent, and it has a right to continue to providing its  
24 security services without a license to or interference from SRI's '260 patent.

25 57. Accordingly, an actual, valid, and justiciable controversy has arisen and exists  
26 between Fortinet and SRI. Fortinet desires a prompt and definitive judicial determination and  
27 declaration that its products do not infringe any valid claim of the '260 patent. Such a  
28

determination and declaration are necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

**ELEVENTH CAUSE OF ACTION**  
**(Declaratory Judgment of Invalidity of U.S. Patent No. 7,694,115)**

58. Fortinet repeats and realleges each and every allegation set forth in paragraphs 1 through 57, inclusive, and incorporates them by reference herein.

59. Because SRI contends that Fortinet needs to license the SRI patents, it follows that SRI believes its '115 patent is valid and infringed by Fortinet. As a result of the totality of the circumstances between the parties discussed above, Fortinet believes that SRI intends to sue Fortinet for infringement of the '115 patent.

60. Fortinet contends that the '115 patent is invalid because it fails to satisfy the conditions and requirements for patentability as set forth, *inter alia*, in Sections 101, 102, 103, and/or 112 of Title 35 of the United States Code. For example, the '115 patent is anticipated and/or rendered obvious in light of Live Traffic, EMERALD 1997, Lewis, and the ISS RealSecure and NetRanger products.

61. On at least the basis that it believes the '115 patent is invalid, Fortinet does not need a license to the '115 patent, and it has a right to continue providing its security products and services without a license to or interference from SRI's '115 patent.

62. Accordingly, an actual, valid, and justiciable controversy has arisen and exists between Fortinet and SRI. Fortinet desires a prompt and definitive judicial determination and declaration that the '115 patent is invalid. Such a determination and declaration are necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

**TWELFTH CAUSE OF ACTION**  
**(Declaratory Judgment of Noninfringement of U.S. Patent No. 7,694,115)**

63. Fortinet repeats and realleges each and every allegation set forth above in paragraphs 1 through 62, inclusive, and incorporates them by reference herein.

///

64. Because SRI contends that Fortinet needs to license the '115 patent, it follows that SRI believes its '115 patent is valid and infringed by Fortinet. As a result of the totality of the circumstances between the parties discussed above, Fortinet believes that SRI intends to sue Fortinet for infringement of the '115 patent.

65. Fortinet contends that its products and services do not infringe, contribute to the infringement of, or induce others to infringe any valid and enforceable claim of the '115 patent, either directly or indirectly, either literally or under the doctrine of equivalents. Accordingly, Fortinet does not need a license to the '115 patent, and it has a right to continue to providing its security services without a license to or interference from SRI's '115 patent.

66. Accordingly, an actual, valid, and justiciable controversy has arisen and exists between Fortinet and SRI. Fortinet desires a prompt and definitive judicial determination and declaration that its products do not infringe any valid claim of the '115 patent. Such a determination and declaration are necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff Fortinet requests entry of judgment in its favor and against defendant SRI as follows:

- (a) Declaring that the claims of the '338 patent, the '203 patent, the '874 patent, the '615 patent, the '260 patent, and the '115 patent are invalid;
- (b) Declaring that Fortinet has not infringed, induced others to infringe, or contributed to the infringement of any valid claim of the '338 patent, the '203 patent, the '874 patent, the '615 patent, the '260 patent, or the '115 patent, either directly or indirectly, either literally or under the doctrine of equivalents;
- (c) Enjoining SRI, its officers, owners, partners, employees, agents, parents, subsidiaries, attorneys, and anyone acting in concert or participation with any of them, from making any claims that Fortinet infringes the '338 patent,

1 the '203 patent, the '874 patent, the '615 patent, the '260 patent, or the '115  
2 patent;

- 3 (d) Enjoining SRI, its officers, owners, partners, employees, agents, parents,  
4 subsidiaries, attorneys, and anyone acting in concert or participation with  
5 any of them, from enforcing the '338 patent, the '203 patent, the '874 patent,  
6 the '615 patent, the '260 patent, or the '115 patent against Fortinet's  
7 products and services;
- 8 (e) Awarding Fortinet its costs of suit, including reasonable attorneys' fees; and
- 9 (f) Granting such other and further relief as the Court may deem just and  
10 proper.

11  
12 Dated: May 17, 2012

Respectfully submitted,

13 WILSON SONSINI GOODRICH & ROSATI  
14 Professional Corporation

15  
16 By:   
Stefani E. Shanberg

17  
18 Attorneys for Plaintiff  
19 FORTINET, INC.  
20  
21  
22  
23  
24  
25  
26  
27  
28

### DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38 and Civil Local Rule 3-6(a), Fortinet hereby demands a jury trial of all issues triable by a jury.

Dated: May 17, 2012

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

By: Stefani E. Shanberg  
Stefani E. Shanberg

Attorneys for Plaintiff  
FORTINET, INC.

E-FILING

ADR

ORIGINAL FILED

MAY 17 2012

Richard W. Wieking  
Clerk, U.S. District Court  
Northern District of California  
San Jose

STEFANI E. SHANBERG (State Bar No. 206717)  
RYAN R. SMITH (State Bar No. 229323)  
ROBIN L. BREWER (State Bar No. 253686)  
WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation  
650 Page Mill Road  
Palo Alto, California 94304  
Telephone: (650) 493-9300  
Facsimile: (650) 565-5100  
E-Mail: sshanberg@wsgr.com  
rsmith@wsgr.com  
rbrewer@wsgr.com

Attorneys for Plaintiff  
FORTINET, INC.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

FORTINET, INC.,  
a Delaware corporation,

Plaintiff,

v.

SRI INTERNATIONAL, INC.,  
a California corporation,

Defendant.

CV 12-02540

COMPLAINT FOR  
DECLARATORY JUDGMENT

JURY TRIAL DEMANDED

Fortinet, Inc. hereby alleges for its complaint against defendant SRI International, on personal knowledge as to its own activities and on information and belief as to the activities of others, as follows:

**THE PARTIES**

1. Plaintiff Fortinet, Inc. ("Fortinet") is a corporation organized and existing under the laws of Delaware, with its principal place of business at 1090 Kifer Road, Sunnyvale, California 94086. Plaintiff is a worldwide provider of network security appliances and a market leader in unified threat management (UTM) solutions. Fortinet's products and subscription



1 services provide broad, integrated, and high-performance protection against dynamic security  
2 threats, while simplifying the IT security infrastructure.

3 2. Defendant SRI International, Inc. ("SRI") is an independent research institute  
4 incorporated under the laws of California, and has a regular and established place of business at  
5 333 Ravenswood Avenue, Menlo Park, California 94025.

### 6 INTRADISTRICT ASSIGNMENT

7 3. Pursuant to Civil Local Rule 3-2(c), this is an Intellectual Property Action to be  
8 assigned on a district-wide basis.

### 9 BACKGROUND

10 4. United States Patent No. 6,321,338 ("the '338 patent"), entitled Network  
11 Surveillance, states on its face that it is assigned to SRI. The '338 patent states that it issued on  
12 November 20, 2001. A true and correct copy of the '338 patent is attached hereto as Exhibit A.

13 5. United States Patent No. 6,484,203 ("the '203 patent"), entitled Hierarchical  
14 Event Monitoring and Analysis, states on its face that it is assigned to SRI. The '203 patent  
15 states that it issued on November 19, 2002. A true and correct copy of the '203 patent is  
16 attached hereto as Exhibit B.

17 6. United States Patent No. 6,704,874 ("the '874 patent"), entitled Network-Based  
18 Alert Management, states on its face that it is assigned to SRI. The '874 patent states that it  
19 issued on March 9, 2004. A true and correct copy of the '874 patent is attached hereto as  
20 Exhibit C.

21 7. United States Patent No. 6,711,615 ("the '615 patent"), entitled Network  
22 Surveillance, states on its face that it is assigned to SRI. The '615 patent states that it issued on  
23 March 23, 2004. A true and correct copy of the '615 patent is attached hereto as Exhibit D.

24 8. United States Patent No. 7,594,260 ("the '260 patent"), entitled Network  
25 Surveillance Using Long-Term and Short-Term Statistical Profiles to Determine Suspicious  
26 Network Activity, states on its face that it is assigned to SRI. The '260 patent states that it issued  
27 on September 22, 2009. A true and correct copy of the '260 patent is attached hereto as  
28 Exhibit E.

1           9.     United States Patent No. 7,694,115 (“the ’115 patent”), entitled Network-Based  
2 Alert Management System, states on its face that it is assigned to SRI. The ’115 patent states  
3 that it issued on April 6, 2010. A true and correct copy of the ’115 patent is attached hereto as  
4 Exhibit F.

5           10.    In August of 2004, SRI filed a lawsuit against both Internet Security Systems, Inc.  
6 and Symantec Corporation in the United States District Court for the District of Delaware  
7 alleging infringement of, *inter alia*, the ’338 patent, the ’203 patent, and the ’615 patent. That  
8 lawsuit continued until late 2011. In February 2011, SRI filed a second lawsuit, also in  
9 Delaware, alleging that Symantec infringed the ’203 patent and the ’615 patent. The parties to  
10 that second lawsuit stipulated to dismissal on April 27, 2012. SRI has, therefore, been engaged  
11 in a persistent pattern of litigation involving at least the ’338 patent, the ’203 patent, and the ’615  
12 patent for nearly eight years.

13           11.    On May 9, 2012—less than two weeks after concluding nearly eight years of  
14 persistent litigation—SRI’s Vice President of Legal and Business Affairs and General Counsel,  
15 Richard H. Abramson, wrote to John Whittle, Fortinet’s Vice President of Legal and Corporate  
16 Development, seeking to “initiate a discussion with you regarding a license to this portfolio,” and  
17 listing each of the patents attached as Exhibits A-F as patents “applicable to Fortinet’s business.”  
18 Mr. Abramson touted “SRI’s patent position” and “earlier enforcement efforts” which include  
19 years of litigation. Mr. Abramson specifically said SRI believes these patents to be “highly  
20 relevant” to “all Fortinet products that incorporate FortiGate IPS with FortiAnalyzer.” And Mr.  
21 Abramson copied SRI’s litigation counsel on the letter. In other words, SRI alleged that  
22 numerous Fortinet products infringe the patents attached as Exhibits A-F.

23           12.    Upon receipt of Mr. Abramson’s letter, and in light of SRI’s persistent pattern of  
24 litigation, Fortinet immediately became concerned that it is SRI’s next litigation target and  
25 checked dockets to confirm no such complaint had yet been filed. Fortinet believes SRI will not  
26 hesitate to file suit immediately.

27    ///

28    ///

**FIRST CAUSE OF ACTION**  
**(Declaratory Judgment of Invalidity of U.S. Patent No. 6,321,338)**

13. Fortinet repeats and realleges each and every allegation set forth in paragraphs 1 through 12, inclusive, and incorporates them by reference herein.

14. Because SRI contends that Fortinet needs to license the SRI patents, it follows that SRI believes its '338 patent is valid and infringed by Fortinet. As a result of the totality of the circumstances between the parties discussed above, Fortinet believes that SRI intends to sue Fortinet for infringement of the '338 patent.

15. Fortinet contends that the '338 patent is invalid because it fails to satisfy the conditions and requirements for patentability as set forth, *inter alia*, in Sections 101, 102, 103, and/or 112 of Title 35 of the United States Code. For example, the '338 patent is anticipated and/or rendered obvious in light of a paper entitled "Live Traffic Analysis of TCP/IP Gateways" ("Live Traffic") and/or "EMERALD: Event Monitoring Enabling Responses To Anomalous Live Disturbances" ("EMERALD 1997").

16. On at least the basis that it believes the '338 patent is invalid, Fortinet does not need a license to the '338 patent, and it has a right to continue providing its security products and services without a license to or interference from SRI's '338 patent.

17. Accordingly, an actual, valid, and justiciable controversy has arisen and exists between Fortinet and SRI. Fortinet desires a prompt and definitive judicial determination and declaration that the '338 patent is invalid. Such a determination and declaration are necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

**SECOND CAUSE OF ACTION**  
**(Declaratory Judgment of Noninfringement of U.S. Patent No. 6,321,338)**

18. Fortinet repeats and realleges each and every allegation set forth above in paragraphs 1 through 17, inclusive, and incorporates them by reference herein.

19. Because SRI contends that Fortinet needs to license the '338 patent, it follows that SRI believes its '338 patent is valid and infringed by Fortinet. As a result of the totality of the

1 circumstances between the parties discussed above, Fortinet believes that SRI intends to sue  
2 Fortinet for infringement of the '338 patent.

3 20. Fortinet contends that its products and services do not infringe, contribute to the  
4 infringement of, or induce others to infringe any valid and enforceable claim of the '338 patent,  
5 either directly or indirectly, either literally or under the doctrine of equivalents. Accordingly,  
6 Fortinet does not need a license to the '338 patent, and it has a right to continue to providing its  
7 security services without a license to or interference from SRI's '338 patent.

8 21. Accordingly, an actual, valid, and justiciable controversy has arisen and exists  
9 between Fortinet and SRI. Fortinet desires a prompt and definitive judicial determination and  
10 declaration that its products do not infringe any valid claim of the '338 patent. Such a  
11 determination and declaration are necessary and appropriate at this time in order that the parties  
12 may ascertain their respective rights and duties.

13  
14 **THIRD CAUSE OF ACTION**  
**(Declaratory Judgment of Invalidity of U.S. Patent No. 6,484,203)**

15 22. Fortinet repeats and realleges each and every allegation set forth in paragraphs 1  
16 through 21, inclusive, and incorporates them by reference herein.

17 23. Because SRI contends that Fortinet needs to license the SRI patents, it follows  
18 that SRI believes its '203 patent is valid and infringed by Fortinet. As a result of the totality of  
19 the circumstances between the parties discussed above, Fortinet believes that SRI intends to sue  
20 Fortinet for infringement of the '203 patent.

21 24. Fortinet contends that the '203 patent is invalid because it fails to satisfy the  
22 conditions and requirements for patentability as set forth, *inter alia*, in Sections 101, 102, 103,  
23 and/or 112 of Title 35 of the United States Code. For example, the '203 patent is anticipated  
24 and/or rendered obvious in light of Live Traffic, EMERALD 1997, and U.S. Patent No.  
25 5,768,501 ("Lewis"), and the ISS RealSecure and NetRanger products.

26 25. On at least the basis that it believes the '203 patent is invalid, Fortinet does not  
27 need a license to the '203 patent, and it has a right to continue providing its security products and  
28 services without a license to or interference from SRI's '203 patent.

1           26.     Accordingly, an actual, valid, and justiciable controversy has arisen and exists  
2 between Fortinet and SRI. Fortinet desires a prompt and definitive judicial determination and  
3 declaration that the '203 patent is invalid. Such a determination and declaration are necessary  
4 and appropriate at this time in order that the parties may ascertain their respective rights and  
5 duties.

6  
7                                   **FOURTH CAUSE OF ACTION**  
8                                   **(Declaratory Judgment of Noninfringement of U.S. Patent No. 6,484,203)**

9           27.     Fortinet repeats and realleges each and every allegation set forth above in  
10 paragraphs 1 through 26, inclusive, and incorporates them by reference herein.

11           28.     Because SRI contends that Fortinet needs to license the '203 patent, it follows that  
12 SRI believes its '203 patent is valid and infringed by Fortinet. As a result of the totality of the  
13 circumstances between the parties discussed above, Fortinet believes that SRI intends to sue  
14 Fortinet for infringement of the '203 patent.

15           29.     Fortinet contends that its products and services do not infringe, contribute to the  
16 infringement of, or induce others to infringe any valid and enforceable claim of the '203 patent,  
17 either directly or indirectly, either literally or under the doctrine of equivalents. Accordingly,  
18 Fortinet does not need a license to the '203 patent, and it has a right to continue to providing its  
19 security services without a license to or interference from SRI's '203 patent.

20           30.     Accordingly, an actual, valid, and justiciable controversy has arisen and exists  
21 between Fortinet and SRI. Fortinet desires a prompt and definitive judicial determination and  
22 declaration that its products do not infringe any valid claim of the '203 patent. Such a  
23 determination and declaration are necessary and appropriate at this time in order that the parties  
24 may ascertain their respective rights and duties.

25                                   **FIFTH CAUSE OF ACTION**  
26                                   **(Declaratory Judgment of Invalidity of U.S. Patent No. 6,704,874)**

27           31.     Fortinet repeats and realleges each and every allegation set forth in paragraphs 1  
28 through 30, inclusive, and incorporates them by reference herein.

///

32. Because SRI contends that Fortinet needs to license the SRI patents, it follows that SRI believes its '874 patent is valid and infringed by Fortinet. As a result of the totality of the circumstances between the parties discussed above, Fortinet believes that SRI intends to sue Fortinet for infringement of the '874 patent.

33. Fortinet contends that the '874 patent is invalid because it fails to satisfy the conditions and requirements for patentability as set forth, *inter alia*, in Sections 101, 102, 103, and/or 112 of Title 35 of the United States Code. For example, the '874 patent is anticipated and/or rendered obvious in light of Live Traffic, EMERALD 1997, Lewis, and the ISS RealSecure and NetRanger products.

34. On at least the basis that it believes the '874 patent is invalid, Fortinet does not need a license to the '874 patent, and it has a right to continue providing its security products and services without a license to or interference from SRI's '874 patent.

35. Accordingly, an actual, valid, and justiciable controversy has arisen and exists between Fortinet and SRI. Fortinet desires a prompt and definitive judicial determination and declaration that the '874 patent is invalid. Such a determination and declaration are necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

#### SIXTH CAUSE OF ACTION

##### **(Declaratory Judgment of Noninfringement of U.S. Patent No. 6,704,874)**

36. Fortinet repeats and realleges each and every allegation set forth above in paragraphs 1 through 35, inclusive, and incorporates them by reference herein.

37. Because SRI contends that Fortinet needs to license the '874 patent, it follows that SRI believes its '874 patent is valid and infringed by Fortinet. As a result of the totality of the circumstances between the parties discussed above, Fortinet believes that SRI intends to sue Fortinet for infringement of the '874 patent.

38. Fortinet contends that its products and services do not infringe, contribute to the infringement of, or induce others to infringe any valid and enforceable claim of the '874 patent, either directly or indirectly, either literally or under the doctrine of equivalents. Accordingly,

Fortinet does not need a license to the '874 patent, and it has a right to continue to providing its security services without a license to or interference from SRI's '874 patent.

39. Accordingly, an actual, valid, and justiciable controversy has arisen and exists between Fortinet and SRI. Fortinet desires a prompt and definitive judicial determination and declaration that its products do not infringe any valid claim of the '874 patent. Such a determination and declaration are necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

**SEVENTH CAUSE OF ACTION**  
**(Declaratory Judgment of Invalidity of U.S. Patent No. 6,711,615)**

40. Fortinet repeats and realleges each and every allegation set forth in paragraphs 1 through 39, inclusive, and incorporates them by reference herein.

41. Because SRI contends that Fortinet needs to license the SRI patents, it follows that SRI believes its '615 patent is valid and infringed by Fortinet. As a result of the totality of the circumstances between the parties discussed above, Fortinet believes that SRI intends to sue Fortinet for infringement of the '615 patent.

42. Fortinet contends that the '615 patent is invalid because it fails to satisfy the conditions and requirements for patentability as set forth, *inter alia*, in Sections 101, 102, 103, and/or 112 of Title 35 of the United States Code. For example, the '615 patent is anticipated and/or rendered obvious in light of Live Traffic, EMERALD 1997, Lewis, and the ISS RealSecure and NetRanger products.

43. On at least the basis that it believes the '615 patent is invalid, Fortinet does not need a license to the '615 patent, and it has a right to continue providing its security products and services without a license to or interference from SRI's '615 patent.

44. Accordingly, an actual, valid, and justiciable controversy has arisen and exists between Fortinet and SRI. Fortinet desires a prompt and definitive judicial determination and declaration that the '615 patent is invalid. Such a determination and declaration are necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.